Filed 7/2/19 In re M.S. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re M.S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. M.S., Defendant and Appellant.	E071586 (Super.Ct.No. SWJ1800497) OPINION

APPEAL from the Superior Court of Riverside County. Sean P. Lafferty, Judge. Affirmed.

Christine M. Aros, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant M.S., a minor, admitted making criminal threats. (Pen. Code, § 422.) M.S. also admitted personally using a deadly and dangerous weapon, specifically a pellet gun, when making criminal threats. (Pen. Code, §§ 12022, subd. (b)(1), 1192.7, subd. (c)(23).) The juvenile court adjudged M.S. to be a ward of the court. (Welf. & Inst. Code, § 602.)[1]

On October 16, 2018, the juvenile court ordered M.S. be placed in the custody of Riverside County Probation Department (the Department), to be placed in a foster home, group home, relative's home, county facility, or private facility. On December 28, M.S. remained in juvenile hall because no California facilities were available or adequate for M.S.'s needs. The juvenile court authorized the Department to place M.S. in an out-of-state facility. (§ 727.1.)

M.S. raises two issues on appeal. First, M.S. contends the prosecutor and juvenile court erred because M.S. was not notified of his eligibility for deferred entry of judgment. (§ 790.) Second, M.S. contends the juvenile court erred by ordering an out-of-home placement. We affirm the disposition order.

FACTUAL AND PROCEDURAL HISTORY

A. OFFENSE

In August 2018, M.S. was 17 years old. M.S. and the victim, a female, dated for approximately nine months. The victim ended the dating relationship on approximately August 21, 2018.

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[1] All subsequent statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

On August 25 or 26, M.S. went to the victim's house.[2] The victim told M.S. to leave. The victim refused to let M.S. inside her home. M.S. refused to leave. M.S. threw items at the residence. The victim's aunt asked M.S. to leave, and he left. M.S. sent Facebook messages to the victim. One message read, " 'Ok cuz j is going to kill you I hope you know that.' " The victim did not know the identity of "j."

On August 28, the victim waited at a public bus stop in front of her high school. As the bus approached, the victim saw M.S. inside the bus. M.S. "lifted his shirt with his right hand and brandished what looked like the grip of a handgun." The victim was scared because M.S. "recently told her he was going to send someone to kill her. This action made her believe the threat was credible." M.S. exited the bus. The victim ignored M.S. and quickly boarded the bus. As the bus pulled away, M.S. waved the gun in the air with his right hand. The victim recognized the gun as a pellet gun she had seen earlier. A sheriff's deputy searched M.S.'s bedroom and found "[a] black revolver style pellet gun." The deputy detained M.S. and transported him to juvenile hall.

B. SCHOOL THREAT ASSESSMENT REPORT

The Department completed a "School Threat Assessment" report. The report included a "Prior History" section, which read, "On December 15, 2017, a referral was received alleging 286(b)(1) PC (Sodomy: Person under 18 Years Old). The referral was forwarded to the District Attorney's Office, but returned to the Probation

[2] The record reflects M.S. went to the victim's house "over the weekend." We take judicial notice of the fact that August 25, 2018, was a Saturday and that August 26, 2018, was a Sunday. (Evid. Code, § 451, subd. (f) [matters not reasonably subject to dispute].)

Department on December 27, 2017, and he was referred to the Diversion program and required to attend a Relationship Boundaries Class. He has yet to attend the class, and complete the requirements of the Diversion program."

M.S. suffered from ADHD with impulsivity. M.S. attended special education classes. M.S.'s biological parents' parental rights were terminated on April 28, 2008, by the dependency court. M.S. was neglected and physically abused by his biological mother. M.S. was physically and sexually abused by his biological mother's boyfriend. M.S. resided with his grandmother (Grandmother), who is his guardian.[3]

When a deputy described the pellet gun to Grandmother, she said the pellet gun had been stored in her bedroom and M.S. was not allowed to access it. Grandmother " 'had no idea' that [M.S.] had her pellet gun." At the time of his detention in the instant case, M.S. admitted to abusing marijuana two to three times per day. M.S. had been abusing marijuana since he was 13 years old. Grandmother was unaware of M.S.'s marijuana use. Grandmother reported that M.S. "has an extensive disciplinary record dating back to the 'first grade.' " Grandmother explained, "[M.S.] carried weapons to school before, including a knife that he was caught on campus with during the 2017-2018 school year."

A licensed marriage and family therapist conducted a mental health assessment of M.S. on August 29, 2018. The therapist found M.S. was " 'is very likely a threat to

[3] In the record, Grandmother is occasionally referred to as M.S.'s adopted mother. As a result, there is ambiguity regarding whether Grandmother is M.S.'s legal guardian or adopted mother.

the community at this time.' " The Department found that M.S. posed a risk to himself and the community. The Department decided that supervision in Grandmother's home would not be appropriate because Grandmother's ability to control M.S. "must be strengthened before [M.S.] can be safety returned to [her] custody."

C. DETENTION HEARING

On August 31, the juvenile court found M.S. should be detained at juvenile hall to protect M.S. and the community. The minute order from the August 31 hearing read, "Minor referred to the Probation Department pursuant to 790 WIC. [¶] . . . Counsel to be present with [M.S.] at [the] time of interview by Probation." The minute order further read, "Hearing re: Return of 654/790/725(a) WIC report on Original Delinquency Petition (602) filed 08/30/18 as to [M.S.] set 09/17/18 at 8:00 in Department SJ1." The minute order continued, "Referred to Probation Department for 654/790/725(a) WIC REFERRAL AND RECOMMENDATION[.] [¶] Minor ordered to cooperate with Probation Office in preparation of probation report."

D. PROBATION OFFICER'S REPORT

Grandmother told the Department that the offense at issue in this case "is 'kid stuff.' " Nevertheless, Grandmother said she "would like [M.S.] to be placed on probation, to help give him structure and hold him accountable."

On January 29, 2018, at school, M.S. " 'hit another student on the face and threatened another student telling him "he was going to slash his throat." ' [M.S.] was suspended for three days as a result." "On May 11, 2017, [M.S.] was placed on a three day suspension for 'grabbing another student by the arm and proceed[ing] to touch the

student's bottom against her will.' On January 13, 2017, he was placed on [a] five day suspension for 'possession of a knife with a 4" blade. He showed the knife with the blade exposed to other students.' "

In 2015, M.S. threatened a school assistant principal. M.S. said, " 'Yeah, I said I'm going to crack you . . . that's a not a threat, that's a promise.' Later the same day, [M.S.] was found to be in possession of a knife. [M.S.] admitted to having a knife on the school bus and to have 'pulled it out' and shoved it at another student while saying 'you better calm down or I'm gonna cut you.' "

While in juvenile hall in the instant case, M.S. was served with an order of protection for the victim. M.S. said, " 'I've got to stay 100 yards away? That's alright. I can still pop her from that distance,' and held his arms and hands up in a fashion as if he was holding a large gun. On August 31, 2018, [M.S.] was placed on behavior control segregation for 'physically threatening staff, and verbal abuse.' Further, he 'challenged another youth to a fight.' " M.S. was assaulted on September 4. On September 5, M.S. was transferred to Indio juvenile hall, where he was immediately disrespectful to staff. Staff counseled M.S. about Indio being a fresh start, and M.S. had been respectful since that time.

The Department's report included a section entitled "Interagency Screening Committee," which provided, " 'The youth's case was screened before the Interagency Placement Screening Committee on September 11, 2018. The youth's treatment needs were identified as: Individual Counseling, Family Counseling, Behavioral Health Services, Drug Treatment, Anger Management, Victim Awareness, Impulse Control,

Physical Abuse Treatment, Sexual Abuse Treatment, and Emancipation Skills. The Committee determined the youth meets one of the three eligibility criteria for placement in an STRTP [(short-term residential therapeutic program)] pursuant to 4096(e)(1) WIC; he meets the medical necessity criteria for Medi-Cal specialty mental health services, as described in section 1830.205 or 1830.210 of Title 9 of the California Code of Regulations, and his individual or treatment needs can only be met by the level of care provided in an STRTP. As such, the youth's identified problems and treatment needs cannot be adequately addressed by conventional outpatient programs and the support of probation field services."

In regard to section 790, the report reflects, "With regard to Deferred Entry of Judgment, the minor is technically eligible, pursuant to 790 WIC. However, considering the minor's age, maturity, educational background, family relationships, demonstrable motivation, treatment history, and other mitigating and aggravating factors, this officer believes the minor is not suitable for a program of probation supervision under Deferred Entry of Judgment. Due to the minor's substance abuse history, noted school behavioral issues, willingness to conceal a firearm in a school zone, and current societal awareness of gun violence in schools, it is imperative while supervising [M.S.], the probation department have the ability to detain him if needed for his own protection or the protection of the community.

"A grant of wardship appears most fitting in this matter . . . . Considering [the] totality of the minor's social history and elevated behavioral concerns in the instant matter, an order to place the minor in order to receive comprehensive therapeutic

services appears to be appropriate. Based on all the concerns listed above, the Interagency Placement Screening Committee, as well as the undersigned, considers the minor to be a suitable and appropriate candidate for out-of-home placement. The minor's mental health issues, substance abuse history, and academic behavioral issues in combination with his abilities to obtain a weapon reflect a need for intensive supervision."

E. DISPOSITION HEARING

On October 16, the juvenile court held a contested disposition hearing. At the hearing, M.S. called as a witness the deputy probation officer who authored the probation report. The probation officer testified that M.S. had never before been placed on probation and had never before tried community-based programs. Nevertheless, the probation officer believed out-of-home placement was appropriate due to M.S.'s continuing issues with peers and staff.

The juvenile court asked if M.S. could be placed at home with Wraparound services. The probation officer said, "[I]t was—would be safer for him and for the community to begin immediate services instead of slowly building up the Wraparound . . . ." The court asked if M.S. still posed a risk of danger to the victim. The probation officer replied, "It's based off of [M.S.]'s account . . . to the mental health services at juvenile hall that he was determined that he was still going to—back some type of revenge."

A senior probation officer who worked as a placement coordinator (the placement coordinator) also testified as a witness for M.S. The placement coordinator

participated in the interagency screening committee's meeting for M.S.'s case. The committee discussed the fact that M.S. had been removed from his biological mother at a young age but did not discuss the possible detrimental impact that another removal may have on him. The committee discussed Wraparound services but decided Wraparound would be inappropriate due to concerns about the community's safety and the victim's safety. The placement coordinator explained that Grandmother "may have been naïve" regarding M.S.'s use of drugs and weapons. The committee also noted that Grandmother failed to take M.S. to complete his diversion program for the prior sodomy allegation (§ 286).

The court asked, "And would it . . . be fair to say that the group's conclusion is that the odds of him receiving consistent therapeutic services and monitoring of, perhaps, medications that may be needed would be best outside of the home?" The placement coordinator replied, "Yes."

During closing argument, M.S.'s attorney asserted the committee failed to consider community-based options, such as Wraparound, that would permit M.S. to remain at home. M.S.'s attorney argued that M.S. had never been supervised by a probation officer, and that less restrictive placement options were "just jumped over based on the nature of the offense, the seriousness of the offense." M.S.'s attorney argued, "[T]here's a lack of, really, an effort, a reasonable effort to prevent removal." M.S.'s attorney argued the Wraparound team should be permitted to screen the case to decide if Wraparound services could meet M.S.'s needs.

M.S.'s attorney contended, "I don't believe there's any sufficient justification for placement at this time, given that we have not even tried the community-based resources, let alone exhausted them. And there has to be a balance. We can't solely focus on what happened and the fear or the what might occur [*sic*]."

The prosecutor asserted that M.S. was "beyond the control of his grandmother at this point." The prosecutor argued that a short-term residential treatment program would permit M.S. to receive intensive services so that when M.S. returned to Grandmother's home, he would "be in a better place."

After taking a recess, the juvenile court decided that M.S. would be placed outside of Grandmother's home. The juvenile court concluded that community-based resources would not be effective in meeting M.S.'s needs. The juvenile court pointed to Grandmother characterizing M.S.'s offense as "kid stuff" as evidence that placement at home would be ineffective to meet M.S.'s immediate needs.

In making its orders, the juvenile court said, "At this time, it is my order that informal probation, deferred entry of judgment are denied. And [M.S.] is adjudged a ward of the court. His care, custody, and control will be placed with the chief probation officer of Riverside County. He'll be removed from the custody of his parent . . . and he will be placed in a suitable foster or group home, relative home, county or private facility with no preference for such period as deemed necessary by the staff and the probation officer." The court further ordered that M.S. be detained at juvenile hall pending placement.

DISCUSSION

A. DEFERRED ENTRY OF JUDGMENT

M.S. contends the prosecutor and juvenile court erred by failing to properly notify M.S. that he was eligible for deferred entry of judgment (DEJ). (§ 790.) The People concede M.S. was eligible for DEJ. (§ 790.) The People assert that because a hearing was already held on the issue, there is no need to remand the matter to the juvenile court.

We see nothing indicating that a lack of notice was raised as an issue in the juvenile court. Therefore, the juvenile court did not examine the issue. As a result, we apply a de novo standard of review. (See *People v. Valenti* (2016) 243 Cal.App.4th 1140, 1164; see also *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535 ["because there was no exercise of trial court discretion, the Court of Appeal had no occasion to determine whether the trial court abused it"].)[4]

Section 790, subdivision (a) provides: "Notwithstanding Section 654 or 654.2, or any other provision of law, this article shall apply whenever a case is before the juvenile court for a determination of whether a minor is a person described in Section 602 because of the commission of a felony offense, if all of the following circumstances apply:

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[4] The People do not argue that the notice issue was forfeited due to M.S.'s failure to object in the juvenile court. (See *People v. Nguyen* (2017) 18 Cal.App.5th 260, 271 ["It is well-established that a lack of notice can be forfeited by [the] failure to object, even when it is claimed that it violated due process."].) Because the People do not argue forfeiture, we will address the merits of the contention. (Gov. Code, § 68081.)

"(1) The minor has not previously been declared to be a ward of the court for the commission of a felony offense.

"(2) The offense charged is not one of the offenses enumerated in subdivision (b) of Section 707.

"(3) The minor has not previously been committed to the custody of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities.

"(4) The minor's record does not indicate that probation has ever been revoked without being completed.

"(5) The minor is at least 14 years of age at the time of the hearing.

"(6) The minor is eligible for probation pursuant to Section 1203.06 of the Penal Code.

"(7) The offense charged is not rape, sodomy, oral copulation, or an act of sexual penetration specified in Section 289 of the Penal Code when the victim was prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim was at the time incapable, because of mental disorder or developmental or physical disability, of giving consent, and that was known or reasonably should have been known to the minor at the time of the offense."

Section 790, subdivision (b), provides: "The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (7), inclusive, of subdivision (a) apply. If the minor is found eligible for deferred entry of judgment, the prosecuting attorney shall file a declaration in writing with the court or state for the record the grounds upon which the determination is based, and shall make this

information available to the minor and his or her attorney. Upon a finding that the minor is also suitable for deferred entry of judgment and would benefit from education, treatment, and rehabilitation efforts, the court may grant deferred entry of judgment. Under this procedure, the court may set the hearing for deferred entry of judgment at the initial appearance under Section 657. The court shall make findings on the record that a minor is appropriate for deferred entry of judgment pursuant to this article in any case where deferred entry of judgment is granted."

The prosecutor must examine whether a minor is eligible for DEJ prior to, or as soon as possible after, filing a felony petition. If a minor is eligible for DEJ, then the prosecutor must file a "Determination of Eligibility—Deferred Entry of Judgment—Juvenile (form JV-750) with the petition." (Cal. Rules of Court, rule 5.800(b)(1).) The court may summarily grant DEJ or it "may order the probation department to prepare a report with recommendations on the suitability of the child for deferred entry of judgment or set a hearing on the matter, with or without the order to the probation department for a report." (Cal. Rules of Court, rule 5.800(d).)

As the record reflects, and as the People concede, M.S. was eligible for DEJ. The record does not include a declaration or statement by the prosecutor regarding M.S.'s eligibility for DEJ. (§ 790, subd. (b).) The record does not include a form JV-750 attached to the felony petition. (Cal. Rules of Court, rule 5.800(b)(1).) Accordingly, the record contains an error because a declaration or statement by the prosecutor is mandated but was not made. (§ 790, subd. (b).)

We now examine whether the error was harmless. (*People v. Alvarez* (1996) 14 Cal.4th 155, 216 [a judgment cannot be reversed unless prejudice is demonstrated].) We apply the *Watson* standard of review to this error of state law. (*People v. Gonzales* (2013) 56 Cal.4th 353, 357.) We examine whether it is reasonably probable that, absent the error, a result more favorable to M.S. would have been reached. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

At the detention hearing, the juvenile court ordered that M.S. be "referred to the Probation Department pursuant to 790 WIC." Thus, it appears that, despite the lack of a report from the prosecutor, the court understood that M.S. was eligible for DEJ and therefore the court sought "a report with recommendations on the suitability of the child for deferred entry of judgment." (Cal. Rules of Court, rule 5.800(d)(3).)

The probation officer filed a report reflecting M.S. was eligible for DEJ, but concluded M.S. was not suitable for the program due to his "substance abuse history, noted school behavioral issues, willingness to conceal a firearm in a school zone, and current societal awareness of gun violence in schools." The probation officer explained, "[I]t is imperative while supervising [M.S.], the probation department have the ability to detain him if needed for his own protection or the protection of the community." Thus, although the prosecutor did not file a declaration or make a statement on the record, M.S. had notice that (1) he was eligible for DEJ, and (2) the County believed he was not suitable for the program.

It is not reasonably probable that a result more favorable to M.S. would have occurred if the prosecutor had filed a declaration or made a statement because the court

proceeded as though the prosecutor indicated M.S. was eligible for DEJ by ordering a report from the probation officer. (Cal. Rules of Court, rule 5.800(d)(3).)

The probation officer's report provided all the information that the prosecutor's declaration or statement should have provided, specifically that M.S. was eligible for the DEJ and that the County opposed him receiving DEJ. (See Judicial Council of California Forms JV-750 and JV-751.) In other words, M.S. received the information he needed, but it came solely from the probation officer, rather than the prosecutor and the probation officer. (Cal. Rules of Court, rule 5.800(b)(1)&(d)(3).)

We conclude there is not a reasonable probability that M.S. would have obtained a more favorable outcome if the information came from the prosecutor in addition to the probation officer. Because the error was not prejudicial, we will not reverse the judgment.

M.S. contends he was denied a hearing wherein the court considered his eligibility for DEJ. The record reflects the juvenile court considered M.S.'s eligibility for DEJ at the contested disposition hearing. The juvenile court said on the record, "At this time, it is my order that informal probation, deferred entry of judgment are denied." Thus, there was a hearing wherein the juvenile court considered granting DEJ for M.S.

M.S. contends his juvenile court attorney was unaware that the juvenile court would be ruling on DEJ at the disposition hearing because proper notice concerning DEJ was not given. At the August 31 detention hearing, M.S.'s attorney requested the Department issue a report concerning minor's suitability for DEJ. The court granted the

request and ordered the Department to issue a report with recommendations concerning DEJ. (Cal. Rules of Court, rule 5.800(d)(3).)

The court scheduled a hearing regarding the Department's report for September 17. On September 17, M.S. denied the allegations and a contested jurisdiction hearing was scheduled for October 4. On September 25, "[i]ssues [were] discussed on the record"; however, a reporter's transcript of the hearing is not included in the record on appeal. At the hearing, the juvenile court continued the contested jurisdiction hearing to October 11 and vacated the October 4 hearing date because M.S.'s attorney had not received discovery.

Nevertheless, on October 4 the juvenile court held a hearing in the case and M.S. admitted the allegations were true. The juvenile court scheduled a contested disposition hearing for October 16. At the request of M.S.'s counsel, the juvenile court ordered the probation officer and placement coordinator to attend the disposition hearing. The disposition hearing took place on October 16.

The record reflects that the DEJ finding was originally scheduled to be made at the jurisdiction hearing. However, minor ultimately admitted the allegations. As a result, the DEJ finding was deferred to the disposition hearing, presumably so witnesses could be questioned. (Cal. Rules of Court, rule 5.800(f) [evidence the court may consider].) Given that M.S.'s juvenile court counsel was aware that a hearing had been scheduled concerning DEJ, it would be reasonable for counsel to deduce that the DEJ hearing would take place with the contested disposition hearing, because it had not occurred with the jurisdiction hearing as planned.

In sum, while the record does not expressly reflect notice that the DEJ hearing would take place with the disposition hearing, it would have been reasonable for M.S.'s counsel to deduce that the two hearings would occur together on October 16; and, notably, at the disposition hearing M.S.'s counsel did not object based upon a lack of notice when the juvenile court made its DEJ ruling. Therefore, we are not persuaded that counsel was unaware that a DEJ ruling would be made on October 16.

B. OUT-OF-HOME PLACEMENT

M.S. contends the juvenile court erred by ordering him to be in an out-of-home placement.

We apply the abuse of discretion standard of review. (*In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.) "[N]o ward or dependent child shall be taken from the physical custody of a parent or guardian, unless upon the hearing the court finds one of the following facts:

"(1) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

"(2) That the minor has been tried on probation while in custody and has failed to reform.

"(3) That the welfare of the minor requires that custody be taken from the minor's parent or guardian." (§ 726, subd. (a).)

M.S. was placed in a diversion program following a sodomy allegation (Pen. Code, § 286, subd. (b)(1)). M.S. was scheduled to attend a relationship boundaries class on January 10, 2018, which was then rescheduled to July 11, 2018. M.S. failed to

attend the class on July 11. On July 31, Grandmother "requested to reschedule the class due to not having transportation and being on workman's compensation." M.S. said he did not attend the July 11 class because he went to Knott's Berry Farm. The class was rescheduled for September 26, 2018. This evidence demonstrates that M.S. and Grandmother had difficulty complying with court ordered programs.

When Grandmother was interviewed by the Department. Grandmother said "the whole incident is 'kid stuff.' " Grandmother's statement indicates that she does not believe M.S.'s offense is serious. Thus, there is a risk that Grandmother will not take seriously any programs ordered by the court or instituted by the Department. When M.S. was served with a protective order for the victim, M.S. responded by saying he could still shoot the victim from a distance of 100 yards. Thus, there is evidence that M.S. would again seek to attack the victim despite his detention, his stay in juvenile hall, and a restraining order.

M.S. said he had previously taken two types of medication for his ADHD. M.S. stopped taking the medications in 2017 because "[h]e did not like taking medication based on how they made him feel and his research online. His grandmother supported him stopping the medication." This evidence reflects that M.S. is not amenable to taking medication to assist with controlling his behavior.

In regard to therapy, the evidence reflects, "[M.S.] received counseling services from Perris Mental Health, Lake Elsinore Mental Health . . . , and Turning Point . . . in Sanger, CA. Since the family moved back [to Perris] from Sanger in 2017, [M.S.] has not received any counseling services or been on any medication. When he was in

counseling he worked on his 'impulsivity and boundaries.' Further, [Grandmother] explained [M.S.] has not attended counseling or taken medication for the past year, because his behaviors had improved, until the current matter."

In 2017, after the family moved back to Perris, M.S. attended Orange Vista High School for eleventh grade. M.S. attempted 70 high school credits but earned only 20 credits. M.S. had 21 separate disciplinary incidents during the school year. M.S. moved to Val Verde High School for twelfth grade. The school year began on August 15, and on August 27, M.S. punched a wall. Grandmother was called to pick up M.S.

This evidence reflects that Grandmother was inaccurate in her assessment that M.S.'s behavior had improved after returning to Perris. As a result, Grandmother's judgment concerning whether M.S. needed medication and/or counseling was also inaccurate because the evidence reflects that M.S. was struggling and his behavior was suffering. Grandmother did not appear to understand the scope of difficulties with which M.S. was contending. Thus, leaving M.S. in Grandmother's care would pose a risk to M.S.

In sum, Grandmother did not appear to understand the seriousness of M.S.'s offense; the behavioral difficulties he was suffering; his need for intensive treatment; and the importance of attending court ordered programs. Additionally, M.S. did not believe he needed treatment and he discussed shooting the victim after being served with a protective order. Thus, there is evidence supporting the finding that placing M.S. in Grandmother's home would not have beneficial results for M.S. The juvenile court acted within the bounds of reason by ordering an out-of-home placement for M.S. based

upon a finding that "the welfare of the minor requires that custody be taken from the minor's parent or guardian." (§ 726, subd. (a)(3).)

M.S. asserts that he has never been on probation and it was too extreme a measure to remove him from his home without first trying supervised probation. One of the factors in section 726, subdivision (a), is "[t]hat the minor has been tried on probation while in custody and has failed to reform." (§ 726, subd. (a)(2).) There is no requirement that a minor first be given an opportunity to succeed at supervised probation. As set forth *ante*, the juvenile court could reasonably conclude that Grandmother's home posed too many risks to M.S.'s wellbeing because Grandmother and M.S. had little understanding of the risks that M.S. faced, and neither appreciated the amount of treatment necessary to improve M.S.'s situation.

DISPOSITION

The disposition order is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
Acting P. J.

We concur:

FIELDS
J.

RAPHAEL
J.